IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

Crl.MC.No. 420 of 2007()

CC.154/2006 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

.....

PETITIONER: ACCUSED:

---

1. M/S. AMRITHA IMPORTS & EXPORTS,
   34, P & T COLONY, R.T.NAGAR, BANGALORE-560 032,
   KARNATAKA, REPRESENTED BY ITS PROPRIETOR
   SRI.RAMASWAMY N.

2. MR.RAMASWAMY N., AGED ABOUT 65,
   AMRITHA IMPORTS & EXPORTS 34, P & T COLONY,
   R.T.NAGAR, BANGALORE-560 042, KARNATAKA.

3. MR.NARAYANAN R., AGED ABOUT 35,
   S/O. RAMASWAMY, RESIDING AT 27/14, C.V. RAMAN ROAD
   ALWARPET, CHENNAI-18, TAMIL NADU.

BY ADV. SRI.S.EASWARAN

RESPONDENTS: COMPLAINANT & STATE:

---

1. M/S.STRATEGI EXPORTS(I) PVT.LTD.,SOLE
   REPSTVES.OF M/S.LOUIS DREYFUS TRADING LTD.,COFFEE
   DVN.QUEENSBURY(H),OLD BURLINGTON STREET,LONDON WIS
   3LD NO.774,1ST FLOOR,DOUBLE ROAD,INDIRANAGAR,2ND
   STAGE,BANGALORE-560038,HAVING ITS BR.O/A"RAM-MEENA
   VALANJAMBALAM,KOCHI-16,REP.BY DIRECTOR,JOHN THOMAS

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.420 of 2007

Dated this the 20th day of February, 2007

ORDER

The petitioners are accused in a prosecution for offences punishable, inter alia, under Section 420 I.P.C. The petitioners have come to this Court with this petition under Section 482 Cr.P.C with the short contention that what is alleged is virtually only a civil wrong and a civil dispute. The purely civil dispute is unnecessarily exalted by the allegations raised in the complaint to a criminal offence and the criminal adjudicatory process is being misused and abused to vex and harass the petitioners. The allegations are groundless and the matter does not deserve to be proceeded with, submits the learned counsel for the petitioners.

2. The respondent has not entered appearance. I do not want to make any observations which would prejudice the interests of either side, but I would certainly observe that the petitioner has a case to advance for consideration. His contention that the allegations point only to a civil wrong deserves to be considered seriously by the courts.

3. The question is, which court should consider that contention. In every case, whether there is possibility or even a good case for discharge under Section 245(1) or 245(2) Cr.P.C, this Court

cannot and need not invariably invoke its jurisdiction under Section 482 Cr.P.C. Normally such plea for discharge on the ground that the allegation is groundless must be considered at the first instance by the learned Magistrate. In the facts and circumstances of this case, I am convinced that this is an eminently fit case, where such consideration must be made by the learned Magistrate at the threshold itself.

4. The petitioners having already appeared before the learned Magistrate, I do not think it necessary to wait for issue and return of notice to the respondent by this Court. I am satisfied that interests of justice will be served eminently by directing the learned Magistrate to consider the plea of discharge, which the petitioners want to raise under Section 245(2) Cr.P.C. The learned counsel for the petitioners submits that if unnecessary insistence were made on the personal appearance of the petitioners on all dates of posting, it would cause untold hardship and difficulties to the petitioners. I find no reason why the learned Magistrate should now insist on the personal appearance of the petitioners. I direct the learned Magistrate to exempt the petitioners from personal appearance until the plea for discharge under Section 245(2) Cr.P.C is considered and decided. Only if the learned Magistrate comes to a conclusion that the petitioners are not entitled for discharge under Section 245(2)

Cr.P.C, shall the learned Magistrate insist on the personal appearance of the petitioners. Till then the petitioners can appear through counsel.

5. This Crl.M.C is, dismissed with the observation that the petitioners can claim discharge before the learned Magistrate on the ground referred above and on any other ground, which may be available. The learned Magistrate must consider such contention on merits expeditiously, without insisting on the personal presence of the petitioners.

(R.BASANT, JUDGE)

rtr/-